

2011–2012 ALA CD#22
(2012 ALA Midwinter Meeting)

Freedom to Read Foundation

REPORT TO COUNCIL

2012 Midwinter Meeting — Dallas, Texas

As President of the Freedom to Read Foundation, it is my privilege to report on the Foundation's activities since the 2011 Annual Conference:

Strategic Plan: Securing ~~The~~ the Future, Renewing Our Commitment

In October 2010, the Freedom to Read Foundation's Board of Trustees met in Chicago to examine the Foundation's strengths and weaknesses and envision the Foundation's future achievements. The result of this process was a year-long effort to develop a strategic plan for FTRF that would allow FTRF to grow its membership and enlarge its role as a national leader in the defense of the freedom to read, speak, and publish. I am pleased to report that the Board concluded that process here in Dallas, adopting a plan that we believe will secure the Foundation's future and assure that FTRF will remain the premiere legal advocate for intellectual freedom in libraries.

The strategic plan addresses five critical action areas: awareness, litigation, education, engagement, and capacity building. Specific objectives include strategies to ~~expand~~ increase FTRF's membership both within and without the library world; ~~strategies to~~ develop a ~~new~~ more proactive legal strategy that will see FTRF taking the lead as the plaintiff in critical lawsuits intended to protect and preserve First Amendment rights; ~~strategies to~~ develop ~~expand~~ FTRF's educational mission; and ~~strategies to~~ raise up the next generation of intellectual freedom leaders. It is our hope that this plan will soon yield tangible results, including ~~a redesigned~~ an improved website, new membership materials, and educational programs for attorneys, librarians, and

library students; and most importantly, a ~~greater number of lawsuits~~ more comprehensive litigation strategy aimed at vindicating the right to speak freely and read freely.

As a first step in implementing this process, FTRF has already begun a broad membership initiative with several aspects, including renewed outreach to ALA chapters, AASL affiliates, academic libraries, and several other targeted groups. Additionally, FTRF hired former ALA Membership Director John Chrastka and his new firm, AssociaDirect, to survey its members and reach out to the general public to better learn what messages resonate with the public and to deliver recommendations for achieving our goals.

ALA's support for FTRF is crucial to this process, and much appreciated. Keith Michael Fiels was particularly helpful in completing the strategic plan. Your individual membership – and the organizational membership of your institutions – is a key part of our important work of defending the freedom to speak and the freedom to read; it also supports a growing slate of educational programs that foster the next generation of intellectual freedom advocates. To join or renew your membership, please send a check (\$35 minimum dues for personal members, \$100 for organizations) to:

Freedom to Read Foundation
50 E. Huron Street
Chicago, IL 60611

Alternatively, you can call (800) 545-2433, ext. 4226 or visit www.ftrf.org/joinftrf.

Engaging in Litigation: Defending the Freedom to Speak

As a legal advocate for First Amendment rights, FTRF often finds itself defending free speech in difficult circumstances. Sometimes the speaker is notorious, or the message itself is offensive or shocking – yet FTRF steps in to defend the speaker or the right to hear the message, believing that any erosion of fundamental First Amendment rights and freedoms will impact everyone's right to read and hear without interference.

Two such “hard cases” came to FTRF in the last few months. The first, *People of the State of Michigan v. Kwame Kilpatrick*, challenges the Michigan “Son of Sam” law, which bars any person convicted of a crime from collecting any profits from the sale of his or her memories of the crime until court-ordered restitution is paid in full. Both the Supreme Court and the highest courts of other states have uniformly struck down such laws as a violation of the First Amendment. A Michigan county prosecutor is attempting to enforce the law against former Detroit Mayor Kwame Kilpatrick, who wrote and published a memoir titled, *Surrender: The Rise, Fall & Revelation of Kwame Kilpatrick*—following his conviction for obstruction of justice. Both the trial and appellate courts summarily rejected Kilpatrick’s First Amendment arguments, and Kilpatrick now is seeking review by the Michigan Supreme Court.

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On November 1, FTRF joined with the Association of American Publishers, the American Booksellers Foundation for Free Expression and the PEN American Center to file an *amicus curiae* brief in support of Kilpatrick’s First Amendment rights. The brief asks the Michigan Supreme Court to review the lower courts’ decisions, on the grounds that the Michigan law is a content-based speech restriction on speech of public concern.

The second lawsuit, *United States v. Alvarez*, presented another difficult issue: should the government be allowed to punish non-defamatory, non-fraudulent false speech? This is the issue at the heart of this lawsuit that challenges the constitutionality of the Stolen Valor Act, a law that makes it a crime to lie about having received military honors. Alvarez, the defendant, was charged with violating the Act after he falsely told the audience at a meeting that he had been awarded the Congressional Medal of Honor. The case is now before the Supreme Court, which granted *certiorari* after the Ninth Circuit Court of Appeals reversed Alvarez’s conviction.

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FTRF has filed an *amicus curiae* brief ~~with court~~ that asks the Supreme Court to overturn the Stolen Valor Act on the grounds that the law creates a new category of unprotected speech that is contrary to long-standing legal precedents holding that the First Amendment protects non-fraudulent fraudulent, non-defamatory false speech. The brief argues that there is no exception to

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the First Amendment for a government-imposed “test of truth,” and that enforcement of such a test would chill the speech of law-abiding media and other entities that distribute information.

Monitoring Litigation: Defending the Freedom to Read

As befits our mission, FTRF is particularly interested in defending the right to read in the library. For this reason, FTRF monitors significant lawsuits addressing the library user’s right to read and access materials in the library, even when FTRF is not involved in the lawsuit as either plaintiff or *amicus curiae*. A trend to note is the increasing number of lawsuits brought against schools and libraries in order to vindicate library users’ right to read and view constitutionally protected Internet materials on library computers without significant interference.

FTRF has been monitoring one such lawsuit, ***Bradburn et al. v. North Central Regional Library District***, since 2006. As you may recall, three library users, represented by the ACLU of Washington State, filed suit in federal district court to challenge the library system’s refusal to honor requests by adult patrons to temporarily disable the filter for sessions of uncensored reading and research. After many years of wrangling and a side trip to the Washington State Supreme Court, the federal district court finally heard oral arguments on the parties’ motion for summary judgment this past October. The parties are now waiting for a decision from the court.

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A second lawsuit, ***Hunter v. City of Salem and the Board of Trustees, Salem Public Library***, charges the Salem Public Library and its board of trustees with unconstitutionally blocking access to websites discussing minority religions by using filtering software that improperly classifies the sites as “occult” or “criminal.” Hunter, a resident of Salem, Missouri, alleges that the Salem Public Library director refused to unblock portions of websites discussing astrology, **Native American religions**, and the Wiccan religion that were blocked by the library’s filter and told Hunter that ~~she~~ **the library** was required to report any person who accessed such sites to the police. This lawsuit is in its early stages and FTRF will continue to monitor it.

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Finally, a third lawsuit, ***PFLAG, Inc. v. Camdenton R-III School District***, challenges the Internet filtering practices of a school district in Missouri. The plaintiffs allege that the school district’s custom-built Internet filtering software includes a viewpoint-discriminatory category

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called “sexuality,” which blocks all LGBT-supportive information, including many websites that are not sexually explicit in any way. The filtering software does, however, allow students to view sites that criticize homosexuality. The lawsuit argues that the district must either unblock the discriminatory “sexuality” filter or obtain other filtering software that is capable of filtering content in a viewpoint-neutral manner. Again, FTRF plans to monitor the progress of this lawsuit.

The Judith F. Krug Fund

FTRF's founding executive director, Judith F. Krug, was passionate about the need to educate both librarians and the public about the First Amendment and the importance of defending the right to read and speak freely. The Judith F. Krug Fund, a memorial fund created by donations made by Judith's family, friends, and colleagues, funds projects and programs that assure that her life's work will continue far into the future.

The Judith F. Krug Fund continues to make grants to underwrite Banned Books Week observances conducted by diverse groups in communities and institutions across the nation. This year's recipients ~~are were~~ the Bay County, FL Public Library, ~~The the~~ Thomas Jefferson Center for the Protection of Free Expression in Virginia, ~~the~~ the Springfield-Greene, ~~MO~~ County, ~~MO~~ Library District, ~~the~~ the North Dakota Library Association Intellectual Freedom Committee, ~~the~~ the Thomas F. Holgate Library at Bennett College ~~in North Carolina;~~ and the Skokie, IL Public Library. Applications for the 2012 Judith F. Krug Fund Banned Books Week grants will be available ~~through at~~ the FTRF website ~~in July, 2012~~ beginning this spring.

In addition to the Banned Books Week grants, the Judith F. Krug Fund is funding the development of ~~various initiatives to provide online~~ intellectual freedom ~~curricula and training~~ education material for LIS students. Both Barbara Jones and Jonathan Kelley are working with the members of ALISE to identify the best means of accomplishing this goal.

Developing Issues

Our Developing Issues Committee identified four emerging issues that may impact intellectual freedom in libraries and give rise to future litigation. These include the growing use and

promotion of labeling and ratings systems for children's literature; threats to public employees' right to speak out publicly on matters of public concern; new immigration laws that compel libraries to verify a user's citizenship before issuing a library card; and the recent adoption of a new reader privacy law in California.

FTRF Authors Event

Last night, after the submission of this report, FTRF held its annual Banned Author Event at the Dallas Public Library, featuring bestselling Young Adult author John Green. Green, author of the challenged book *"Looking for Alaska"* and the ~~forthcoming new (and highly praised)~~ *"The Fault in Our Stars,"* ~~spoke at length about literature and the importance of intellectual freedom was to speak and then sign. He then signed books for his many rabid fans after his presentation, which drew a sellout audience and.~~ The event raised thousands of dollars for the Gordon M. Conable Fund, which provides conference scholarships to library science students and new librarians and library science students who demonstrate a commitment to intellectual freedom in the library.

~~Please consider adding your own support for FTRF by becoming a full personal member of the Freedom to Read Foundation. Your membership in the Freedom to Read Foundation not only supports the important work of defending the freedom to speak and the freedom to read, it also supports a growing slate of educational programs that foster the next generation of intellectual freedom advocates. Please encourage your home libraries and institutions to become organizational members of FTRF as well. Please send a check (\$35 minimum dues for personal members, \$100 for organizations) to:~~

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~~Alternatively, you can join or renew your membership by calling (800) 545-2433, ext. 4226, or online at www.ftrf.org/joinftrf.~~

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Respectfully submitted,

Kent Oliver,
President, Freedom to Read Foundation

